

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 284 of 1981

Date of decision: 19-6-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GAMETI JIVANBHAI SATIDAN

Versus

SHANTILAL PANACHAND

Appearance:

MR RN SHAH for Petitioner

MR A.D.Mithani for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/06/98

ORAL JUDGEMENT

This second appeal has arisen from the regular civil suit No.413 of 1977 filed by the respondent-plaintiff against the appellant-defendant for recovery of sum of Rs.4,000/- and interest of Rs.1500/- and running interest at 15% per annum on the principal amount and cost of suit. The suit came to be decreed by the Civil Judge (Junior Division, Dhrangadhra on 23rd November, 1979. The trial court decreed the suit of the respondent as under:

1. The defendant do pay to the plaintiff, the sum of Rs.4,000/- with interest at 15% per annum from 6-11-1974 till realisation.
2. The defendant will bear his costs and the costs of the plaintiff.
3. The defendant will pay the decretal amount by installments. The defendant will pay first installment of Rs.1500/- on or before Magasar Sud -15 of S.Y.2036 and second instalment of Rs.1500/- on or before Magsar Sud-15 of S.Y.2037 and the last and the remaining amount will be paid on or before Magsar Sud-15 of S.Y.2033. If the defendant fails to pay any installment, the plaintiff will be entitled to recover whole unpaid decretal amount at a time with interest."

The respondent-defendant preferred appeal against the judgment of the learned trial court, which came to be dismissed on 8th December, 1980. Hence this second appeal before this court.

2. This appeal was admitted by this court on 10th September, 1981, and the following question of law-

"Whether the alleged agreement dated 6-11-1973 is an acknowledgment of time barred debt. If yes, what is its effect?"

was framed.

3. The facts of the case in brief are that the respondent-plaintiff filed suit for recovery of the amount together with interest, details of which has been given earlier. It was the case of the plaintiff that the plaintiff was a registered partnership firm registered under the Indian Partnership Act and the firm was carrying on the business of money lending and cotton-pode etc., for which the plaintiff was holding licence. The defendant had taken amount from the plaintiff firm on interest and he had settled the accounts. After settlement of accounts he passed a writing of settled amount of Rs.4773/- . The plaintiff had remitted the

amount of Rs.773/- and therefore the defendant had to pay the amount of Rs.4,000/- in 8 equal installments, each of Rs.450/- and the last ninth installment of Rs.400/-. The defendant could not stand to its aforesaid writing. He made default in payment of installments and as such the plaintiff filed the suit for recovery of the amount together with interest thereon. The trial court had framed as many as seven issues. For the present appeal, issue No.3 is relevant, which reads as under:

"Whether the plaintiff proves that the defendant has passed debt-document, dated 6-12-1973 for Rs.4773-00 as alleged? If yes, is it legal and valid?"

4. Learned counsel for the appellant pressed for consideration of this court the question which has been framed by this court at the time of admission of second appeal.

Heard the learned counsel for the parties.

5. In the trial court issue No.4 was framed on the question whether the suit is filed within limitation. In the first appellate court, the learned counsel who was appearing for the defendants raised contentions concerning limitation, nonproduction of accounts book by the plaintiff and installments. On the basis of those contentions, learned first appellate court framed three points for consideration, namely, (1) whether the plaintiff proves that the suit is in limitation; (2) whether the plaintiff proves his claim; and (3) what order? The question which has been raised here, whether the agreement dated 6-11-1973 is an acknowledgment of time barred debt or not, was not specifically raised by the defendant before the first appellate court. However, the learned first appellate court has considered this point raised by the appellant-defendant and decided that the document at Exh.28 is a valid contract, and the limitation has arisen for filing suit only when the first installment as agreed upon by the defendant has not been paid. The suit is based on writing Exh.28 which is of the date 6-12-1973. As per this writing there were settled installments by which money was to be paid. The first installment was to be paid on 14-3-1975. So when this installment was not paid rightly cause of action has arisen for the plaintiff, and as such the suit was within limitation. However the question which has been raised is whether the agreement dated 6-11-1973 is an acknowledgment of debt. From the evidence which has come on record, this document has been proved. When the defendant has executed this document and therein he has agreed to pay Rs.4000/- by way of installments, then it

does not lie in his mouth now to challenge that document on the ground that it is a document of acknowledgment of debt. The suit is based on this document which is proved by the plaintiff and as such the plea of past transactions or other things are of no relevance. The basis of the suit is a document and when this document has been proved, then naturally both the courts below have not committed any error in decreeing the plaintiff's suit.

6. In the result I do not find that any question of law, much less any substantial question of law, does arise in this appeal for consideration of this court. The second appeal is dismissed. Interim stay, if any, granted earlier stands vacated. The parties shall bear their own costs.

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